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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FINISAR CORPORATION, a Delaware corporation,

Plaintiff,

v.

U.S. BANK TRUST NATIONAL ASSOCIATION, a national banking association, not in its individual capacity, but solely in its capacity as Indenture Trustee in behalf of all Holders of Finisar Corporation's 5¼% Convertible Subordinated Notes due 2008, 2½% Convertible Senior Subordinated Notes due 2010, and 2½% Convertible Subordinated Notes due 2010; and DOES 1 through 10, inclusive,

Defendants

AND RELATED COUNTERCLAIMS.

Case No. 5:07-CV-04052-JF (PVT)

[Proposed] ORDER GRANTING PLAINTIFF FINISAR CORPORATION'S MOTION TO (1) DISMISS, (2) STRIKE, AND (3) ADJUDICATE U.S. BANK TRUST NATIONAL ASSOCIATION'S COUNTERCLAIMS

Date: **Friday, July 11, 2008**
Time: **9:00 a.m.**
Courtroom: **3**

District Judge: Hon. Jeremy Fogel
Magistrate Judge: Hon. Patricia V. Trumbull

Complaint Filed: June 22, 2007
Trial Date Set: None Yet

[PROPOSED] ORDER GRANTING FINISAR'S MOTION TO (1) DISMISS, (2) STRIKE AND (3) ADJUDICATE U.S. BANK'S COUNTERCLAIMS

CASE NO.: 5:07-CV-04052-JF-PVT

1 Plaintiff Finisar Corporation's Motion to (1) Dismiss, (2) Strike, and (3) Adjudicate U.S.
2 Bank Trust National Association's Counterclaims (the "Motion") was filed in the above-
3 captioned action (the "Action") on May 8, 2008 and heard on July 11, 2008. The Court, having
4 considered the written and oral submissions of the parties in connection with the Motion, and
5 good cause appearing therefor, GRANTS the Motion, and ORDERS as follows:

6 1. Each of the counterclaims attempted to be pleaded in "Defendant and
7 Counterclaim Plaintiff U.S. Bank Trust National Association's Answer to First Amended
8 Complaint and Counterclaims" (the "Answer") is dismissed, pursuant to Rule 12(b)(6) of the
9 Federal Rules of Civil Procedure;

10 2. Page 7, line 1 through page 14, line 1, inclusive, of the Answer is stricken,
11 pursuant to Rule 12(f) of the Federal Rules of Civil Procedure; and

12 3. The counterclaim attempted to be pleaded as Count I in the Answer, at page 12,
13 lines 14-26, is adjudicated in favor of Finisar and against U.S. Bank, pursuant to Rule 12(c) of the
14 Federal Rules of Civil Procedure, such that U.S. Bank shall take nothing thereby.

15
16 DATED: _____

Hon. Jeremy Fogel
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:
D. Anthony Rodriguez, drodriguez@mofo.com; Abby E. Wilkinson, awilkinson@faegre.com;
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